

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

PFIZER, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-89 (GMS)
	)	
TEVA PHARMACEUTICALS USA, AND	)	
TEVA PHARMACEUTICAL	)	
INDUSTRIES, LTD.,	)	
	)	
Defendants.	)	

**ORDER**

In the above-captioned action, plaintiff Pfizer, Inc. (“Pfizer”) accuses defendants Teva Pharmaceuticals USA and Teva Pharmaceutical Industries, Ltd. (collectively “Teva”) of infringing U.S. Patent No. 6,977,243 (filed May 21, 2002) (“the ‘243 Patent”), which “relates to crystal forms of azithromycin, an antibiotic useful in the treatment of infections.” ‘243 Patent, at [57]. Pfizer filed this lawsuit on February 8, 2006. Subsequently, on February 14, 2006, Teva filed suit against Pfizer in the United States District Court for the Southern District of New York. In that action, Teva seeks a judgment declaring the ‘243 Patent invalid and not infringed. Presently before the court are Teva’s motion to transfer to the Southern District of New York, and Pfizer’s motion to enjoin Teva from further prosecuting the later-filed action in New York.

On the same day it filed suit against Teva, Pfizer separately filed a related action in this district against Sandoz, Inc. (“Sandoz”), also alleging infringement of the ‘243 Patent. That case is pending before the Honorable Joseph J. Farnan, Jr. C.A. No. 06-90-JJF. Like Teva, Sandoz subsequently filed a declaratory judgment action against Pfizer in the Southern District of New York, and then moved to transfer the case before Judge Farnan to New York. On May 19, 2006, Judge Farnan wrote a persuasive memorandum and order denying Sandoz’s motion. Because the

issues and arguments raised by Sandoz are substantially similar to those raised by Teva, the court adopts Judge Farnan's reasoning and will deny Teva's motion. In addition, the court does not find sufficient evidence of bad faith or forum shopping to justify departure from the first-filed rule. Thus, Teva will be enjoined from further prosecution of its declaratory judgment action in the Southern District of New York. *EEOC v. Univ. of Penn.*, 850 F.2d 969, 971 (3d Cir. 1988) ("The first-filed rule encourages sound judicial administration and promotes comity among federal courts of equal rank. It gives a court 'the power' to enjoin the subsequent prosecution of proceedings involving the same parties and the same issues already before another district court.").

IT IS HEREBY ORDERED THAT:

1. Teva's motion to transfer (D.I. 8) be DENIED;
2. Pfizer's motion to enjoin (D.I. 21) be GRANTED; and
3. Teva be ENJOINED from further prosecution of its declaratory judgment action in the Southern District of New York.

Dated: May 26, 2006

/s/ Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE